

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 24354-1-III

Respondent,

Division Three

v.

A.J.,

Appellant.

UNPUBLISHED OPINION

SCHULTHEIS, J. — A police officer saw A.J. place something in a park garbage can and put a plastic bag on top. The officer later found a pair of metal knuckles under a plastic bag in the garbage can. A.J. was adjudged guilty in juvenile court of possession of a dangerous weapon, RCW 9.41.250. On appeal, he contends the evidence is insufficient to prove that he possessed the metal knuckles. We find sufficient evidence to support his adjudication, and affirm.

Facts

One afternoon in March 2005, A.J. and two friends went to a Kennewick public park to play ball and have a barbecue. Around 7 p.m., while the boys were grilling meat,

two Kennewick police officers arrived to investigate a report of suspicious activity at the park. As Officer Roman Trujillo approached, he saw A.J. place something in a nearby garbage can and then place an empty plastic sack on top. One of A.J.'s companions then put a soft drink box on top of the plastic bag. Officer Trujillo found a butterfly knife in the soft drink box. Under the plastic bag, he found a pocketknife and two metal knuckles sitting on top of empty meat packages.

A.J. was charged with one count of possession of a dangerous weapon, a gross misdemeanor. RCW 9A.01.250(1). At his juvenile court adjudication, he testified that as the officers approached, he heard one of his friends move behind him and deposit something into the garbage can. The officer who accompanied Officer Trujillo testified he did not see A.J. place anything into the garbage can because the officer was writing in his notebook as he approached the boys. After the State rested its case, A.J. unsuccessfully moved to dismiss on the ground that there was insufficient evidence he possessed the weapons. The juvenile court adjudged him guilty as charged.

Sufficiency of the Evidence

On appeal, A.J. challenges the sufficiency of the evidence to support his conviction. He contends the evidence does not show that he possessed the metal knuckles.

RCW 9A.01.250(1) criminalizes the manufacture, sale, disposal, or possession of

several listed weapons, including “metal knuckles.” In this case, the State alleged that A.J. violated the statute by possessing the metal knuckles found in the garbage can.

When a crime requires proof of the element of possession, the State must show either actual or constructive possession. *State v. Cote*, 123 Wn. App. 546, 549, 96 P.3d 410 (2004). Actual possession is physical custody of the item, while constructive possession is dominion and control over the item or over the premises containing it. *State v. Jones*, 146 Wn.2d 328, 333, 45 P.3d 1062 (2002); *Cote*, 123 Wn. App. at 549.

Because this is a challenge to the sufficiency of the evidence, this court views the evidence and inferences arising from that evidence in the light most favorable to the State and asks whether any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *State v. Smith*, 155 Wn.2d 496, 501, 120 P.3d 559 (2005). Either direct or circumstantial evidence may establish the requisite elements. *Cote*, 123 Wn. App. at 548. We defer to the trier of fact for resolution of conflicting testimony and for evaluation of the persuasiveness of the evidence. *State v. Cantu*, 156 Wn.2d 819, 830, 132 P.3d 725 (2006). Determinations of credibility are not reviewable on appeal. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

When viewed in the light most favorable to the prosecution, the testimony by Officer Trujillo established that as the officers approached, A.J. placed something in the garbage can and immediately placed an empty plastic bag on top of whatever was in the

garbage can. His friend then placed a soft drink box on top of everything. The officer found metal knuckles under the plastic bag, sitting on the packages that had contained the meat the boys were grilling.

From this evidence, the juvenile court found that the items were discovered resting in the same order as they were placed in the garbage can. Because the officers saw no one else place anything in the garbage can other than A.J. and his friend, the juvenile court concluded that these two boys actually (as opposed to constructively) possessed the weapons discovered there. Specifically, it concluded that A.J. possessed the metal knuckles (placed first in the garbage can), and his friend possessed the butterfly knife (placed in the soft drink box on top of the metal knuckles). These conclusions arise from reasonable inferences from the evidence. Additionally, the juvenile court specifically found that A.J. and his friend were not credible.

A.J. cites *State v. Rieger*, 96 Wn.2d 546, 637 P.2d 236 (1981) for the proposition that the State cannot prove possession of contraband found in a public place without any links to the defendant. In *Rieger*, police found a crowbar and a loaded gun in a box in an alley two days after an attempt was made to break into a nearby shop. Marks on the shop's door could have been made by a crowbar. Three defendants were convicted of attempted burglary and the jury found by special verdict that the defendants were armed. The trial court struck the special verdict due to insufficiency of the evidence. On appeal,

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the Supreme Court agreed with the trial court that the mere presence of the gun near a crowbar two days after the attempted burglary, without witness testimony or other evidence connecting the defendants to the gun, was insufficient to show possession. *Id.* at 548-49.

Rieger is clearly distinguishable. Here, Officer Trujillo saw A.J. deposit something in a specific site under specific conditions. The officer immediately examined the site and found items the trial court could reasonably infer were placed there by A.J. Unlike in *Rieger* the trial court had a reasonable basis to conclude that A.J. had actually possessed the metal knuckles and had hidden them in the garbage can as the officers approached.

Affirmed.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

Schultheis, J.

WE CONCUR:

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Sweeney, C.J.

Kato, J.